

# Kris Nelson Community-Based Research Program

*...a program of the Center for Urban and Regional Affairs (CURA)*

## A Review of Local Wage Theft Ordinances, Data Practices, & Evaluation Procedures

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# Wage Theft Ordinances and Evaluation Procedures

*What is Wage Theft and why is it an important issue?*

The phenomenon of wage theft, where employers fail to compensate their employees with the wages due them, is widespread in the United States. The National Employment Law Project (NELP) has estimated the amount of wages stolen in the United States to be tens of millions of dollars per year (Winning Wage Justice, 2011), and a 2008 survey of workers in Chicago, Los Angeles and New York found that 68% of those surveyed had experienced at least one pay-related violation during the past week of work (RISEP, 2013). While it is technically illegal to deprive an employee of the wages due her, retrieving stolen wages can be a long and convoluted process in many jurisdictions. Traditional conciliation court proceedings sometimes do little to deter the perpetrating employer from offending again. This report provides an outline of how current wage theft policies operate, and in doing so explored the pros and cons of different local (municipal and county-level) approaches to the problem.

In recent years, state and municipal governments have passed legislation to strengthen wage theft laws. These laws operate in different ways. Some place heavy fines or permit sanctions on businesses found in violation, and some create a simpler process for victims to recoup stolen wages. Others institute new requirements during the hiring process, and still others legislate new reporting requirements for businesses. In some municipalities more than one of these approaches is used at once. The political viability of each of these approaches varies from state to state and city to city.

*What are some examples of wage theft ordinances around the country?*

There are State, County, and Municipal wage theft ordinances that have been enacted around the country, most within the past 5 years. Sixteen states have laws, including New York, Alaska, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Louisiana, Maryland, New Hampshire, North Carolina, Pennsylvania, South Carolina, Utah, and West Virginia. These laws vary in their requirements and enforcement capacities. New York and California laws, for example, require employers to provide written annual statements concerning all employee's compensation levels and regulations surrounding that compensation. These laws do not alter the process of recouping lost wages in the event of wage theft.

County and municipal ordinances are becoming more common. Miami-Dade county FL, Hillsborough County FL, Seattle WA, St Petersburg FL, El Paso TX, Washington D.C., and Cincinnati OH have wage theft ordinances. Ordinances in St Petersburg, Cincinnati, and Seattle were passed within the last year. These city and county -level ordinances often go beyond state regulations regarding statement of wages, and set up administrative processes for enforcing wage laws and assisting in the recoup of lost wages.

## **Types of wage theft ordinances**

### *Administrative process*

Instead of employees going to traditional conciliation court to recoup stolen wages, some cities have set up an alternative process within the city government. An administrative authority is created that only hears wage theft complaints. Having an administrative process focused explicitly on wage theft has a few unique benefits.

1. It streamlines the process of recouping wages for victims by creating a central place to make a claim that does not require the same paperwork and time commitment of a traditional conciliation court.
2. The administrators are well-versed in the field of wage theft because it is the body's sole focus.
3. It helps the city stay aware of repeat offenders. If the city has an additional fine or sanction ordinance, the administrative process can keep the city abreast of employers that should be fined. This is a simpler alternative to having to be in constant communication with the district conciliation court, which, in Minneapolis, operates at the county level.

Cities and counties with administrative processes include: Broward County FL, Miami Dade County FL, St Petersburg FL, New York City, Chicago, Seattle WA, and Washington, D.C. Table 1 in the appendix provides greater detail about the legislation in each of these places.

### *Fines and Sanctions*

Some municipalities have passed ordinances that penalize employers who are found to have committed wage theft. These penalties come in two forms: hefty monetary fines, and permitting or contract sanctions. For example, if an employer is found to have stolen wages from its employees, it may be barred from applying for and receiving city contracts on jobs that are bid out.

Cities and counties with only fines and/or sanctions include: El Paso TX, and Cincinnati OH. These ordinances work in tandem with the current conciliation court process in that jurisdiction. The apparent benefits of this policy approach include:

1. Less expensive. Lower city-level cost than setting up an administrative process for hearing wage theft cases.
2. Works within the existing conciliation framework. City works in partnership with the district court. For example in the city of El Paso, Texas, when an employer is found to have violated any part of section 61 of the Texas Labor code, the city adds that employer to a database. This database is maintained by the Wage Theft Coordinator, whose job it is to keep tabs on employers found in violation of Texas wage payment laws.

There is a question of how easy it is for cities to find accurate and up-to-date data on wage theft violations for companies operating in their city. How much FTE time does it take to track down and maintain this data comprehensively?

*How do cities w/o administrative process find out about wage theft violations?*

*Info from the district court? If so, does district court have to change data collection practices to ensure proper classification of wage theft cases?*

Wage theft cases are brought forward by individuals, whether there is an administrative wage theft process at the city or not. For cities without administrative processes, there are a few potential routes to find data on wage theft violations.

1. Keep a database of wage theft violations recorded on a “complaint basis,” with information provided by third parties. These complaints are then checked against court records.
2. Comb through monthly court documents to find wage theft cases. This can be difficult, as there are thousands of cases every month. At the Hennepin County District Court there is no data kept specifically on “wage theft” related conciliation cases. I was told by Anna Lamb, Senior Administrative Manager at the 4th district court, that to identify wage theft cases one would have to read every court filing individually. It may make sense for advocates of wage theft legislation to request that district courts add wage theft as a classification in the data they file for each court case.

*How have wage theft policies been evaluated? Are they successful? How would one measure success?*

Newer wage theft prevention ordinances have not been evaluated. For example, St Petersburg’s Wage Theft Ordinance is only about a year old. According to Eve Epstien, Wage & Hour Compliance Coordinator at the City of St Petersburg, there is not

“much that is measurable yet” about their program. Epstein does, however, anticipate that the ordinance will be evaluated in a manner similar to Miami-Dade County’s.

The Miami-Dade evaluation is required by statute. It is a quarterly report to the county board regarding the “number of inquiries, number of petitions for hearings, number of hearings scheduled, the cost of the hearings, and the results of the hearings” (Annual Fiscal Report of Wage Theft Program from the Mayor, 2015). These annual reports have not been analyzed over time by the county to see changes and trends. However, data only began being comprehensively collected in 2013, and the sophistication of the data gathering has changed and improved each year. It is unclear what data would show a wage theft ordinance to be “successful.” There are a couple of reasons for this. First, in cities that now have wage theft ordinances, data on wage-theft related conciliation was not tracked before the ordinance was put into place. It is therefore difficult to compare number of wage-related complaints brought before and after the ordinance was enacted. Second, even with a few years of data on wage theft cases, trends either up or down in cases heard and money recouped could be seen as good. That is, if more cases are being heard, that is an indication that wage theft problems are widespread in the municipality. Similarly if fewer cases are being heard, that may be an indication that the enforcement mechanism of the wage theft law is effective. One situation where one could infer that a wage theft ordinance is unnecessary is if a new administrative hearing process garnered zero complaints. This hypothetical has not been the case in any of the cities for which there is data on wage theft hearings.



*Miami-Dade Wage Theft Hearings Summary: 2010, 2011, and 2013-15\**

	<b>2010</b>	<b>2011</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>	<b>Totals</b>
<b>Cases Filed</b>	294	995	540	468	549	2,846
<b>Cases Conciliated</b>	23	119	56	112	112	422
<b>Amount of Unpaid Wages Awarded at Hearing</b>	\$24,560	\$110,698	\$159,631	\$196,673	\$258,589	\$750,151

\*No report was filed in 2012, and the 2015 numbers have not yet been audited

As the above table indicates, about 14% of all cases filed over 5 of the past 6 years in Miami-Dade county were found to be valid, and about three-quarters of a million dollars was recouped by employees. The amount of recouped wages does not account for those cases that were given a separate administrative hearing, nor does it account for the additional fees and fines that employers found guilty of wage theft were required to pay.

*Questions and Recommendations*

Below are a few recommendations with corresponding questions that, based upon the research I've been able to do, I feel still need to be answered for a well-conceived wage theft policy proposal to be put forward to the City of Minneapolis. Research on the issue so far has been overwhelmingly related to proving the problem,

and hardly related to examining the efficacy of solutions. Data on the number of cases adjudicated from one city to another could provide some insight into how effective certain policies have been, but this analysis has not yet been performed. The questions below help answer two questions: which kind of wage theft policy should be adopted, and how much will it cost?

1. **Communication between district courts and the city.** Is data on wage theft cases compiled? If so, how can it be effectively shared to combat continued offenses? And how much will this cost both the court and the city?
2. **Establishing evaluation procedures.** In order to determine which kind of policy would be most effective in the city of Minneapolis, it could be important to establish parameters of effectiveness for wage theft ordinances. What results demonstrate that a wage theft ordinance is effective or ineffective? Number of cases? Amount of money recouped?
3. **Estimated FTE for a wage theft coordinator.** Most cities with wage theft programs have a single coordinator, with the rest of the burden rolled into already existing positions within the city. How much time is needed for a coordinator with an administrative hearing process? How much time needed for a coordinator who administers sanctions against offending employers?

## City/Municipal/County Level Wage Theft Policies

Seattle, WA: <http://www.seattle.gov/laborstandards/wage-theft>

Cincinnati, OH:

<http://www.cworkers.org/wp-content/uploads/2016/01/Wage-Enforcement-Ordinance.pdf>

Miami-Dade County: <http://www.miamidade.gov/business/wage-theft.asp>

El Paso: <https://www.elpasotexas.gov/purchasing/wage-theft-ordinance>

Ordinance:

<https://www.elpasotexas.gov/~media/files/coep/purchasing/ordinance%2018370.aspx?la=en>

St. Petersburg, FL: [http://www.stpete.org/city\\_initiatives/wage\\_theft\\_program.php](http://www.stpete.org/city_initiatives/wage_theft_program.php)

Washington, D.C.: <http://does.dc.gov/service/wage-hour-compliance>

Summary:

[http://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/NOTICE%20OF%20WAGE%20THEFT%20PREVENTION%20AMENDMENT%20ACT%20OF%20%202014.pdf](http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/NOTICE%20OF%20WAGE%20THEFT%20PREVENTION%20AMENDMENT%20ACT%20OF%20%202014.pdf)

Municipality	State	Year Passed	Into Effect	Applicable to	Written notice of employee wage required?	Oversight department?	Type of enforcement	Fine	Program Evaluation Process	Contact re eval	More info	
Broward County	Florida	2012	2012	Private employers		Broward County office of Intergovernmental Affairs	Administrative hearing process		report number of cases per year		<a href="http://www.broward.org/INTERGOVERNMENTAL/Pages/WageRecovery.aspx">http://www.broward.org/INTERGOVERNMENTAL/Pages/WageRecovery.aspx</a>	
Cincinnati	Ohio	2016	In process	Employee or subcontractor		City Manager	Sanctions including redaction of city contracts and removal of business licensure		No	N/A (Too early)	<a href="http://www.policymattersohio.org/cincy-wage-theft-feb2016">http://www.policymattersohio.org/cincy-wage-theft-feb2016</a>	
Chicago	Illinois	2013	2013	Employers	No	Committee on License & Consumer Protection	Strips businesses of their license if found guilty of wage theft. Cannot reapply for 4 years	1st Violation: Not less than \$250 and not more than \$2500; 2nd Violation: Not less than \$500 and not more than \$5000	No		See Amendment to Chapter 4-6 of the Municipal Code of Chicago	
Cook County	Illinois	2015	2015	Employers	No		Prohibits any employer found liable/guilty of wage theft from procuring city contracts		unknown			
El Paso	Texas	2015	Pending	No specification	No	City Manager - Wage Theft Coordinator	City may not award contract to business with wage theft adjudication record. No hearing process.		No	N/A (Too early)	<a href="https://www.texasobserver.org/el-paso-becomes-second-city-to-indict-employer-for-wage-theft/">https://www.texasobserver.org/el-paso-becomes-second-city-to-indict-employer-for-wage-theft/</a>	<a href="https://www.elpasotexas.gov/purchasing/wage-theft-ordinance">https://www.elpasotexas.gov/purchasing/wage-theft-ordinance</a>
Miami-Dade County	Florida	2010	2010	Private employers only	No	Miami-Dade Office of Consumer Protection	Administrative hearing process		report number of cases per year	Yes	<a href="http://www.miamidade.gov/business/wage-theft.asp">http://www.miamidade.gov/business/wage-theft.asp</a>	
Seattle	Washington	2014	2015		Yes	Office of Labor Standards	OLS can investigate employee claims of wage theft. Administrative process-online complain submission form or via phone.		Not Yet	Yes	<a href="http://www.seattle.gov/laborstandards/wage-theft">http://www.seattle.gov/laborstandards/wage-theft</a>	
St. Petersburg	Florida	2015	2015	Private employers only	No	City of St Petersburg appointed hearing examiner	Administrative hearing process, Fines	Case-by-case (liquidated damages)	report number of cases per year	Yes	<a href="http://www.stpete.org/city_initiatives/wage_theft_program.php">http://www.stpete.org/city_initiatives/wage_theft_program.php</a>	
Washington	D.C.	2014	2015		Yes	Mayor's Office	Fines, administrative penalties	<2500 for negligent wage theft; <10000 for willful wage theft	report number of cases per year	Yes	<a href="http://does.dc.gov/service/wage-hour-compliance">http://does.dc.gov/service/wage-hour-compliance</a>	